In the High Court of Punjab and Haryana at Chandigarh.

R.S.A.No.4783 of 2001
Date of decision: 5.12.2006

Ram Rup Singh

---Appellant

Vs.

Budha Kaur ---Respondent

Coram: Hon'ble Mr. Justice S.N.Aggarwal

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Present: Mr.Harpreet Rakhra, Advocate,
for the appellant.

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S.N.Aggarwal, J.

Smt. Budha (since deceased) had filed a suit for permanent injunction against her son. It was alleged by her that she had purchased a plot measuring 27'X11'9" situated in Harijan Colony, Mansa from Parbati vide agreement dated 30.12.1974 Thereafter, she had constructed her house thereon and started living. She was the owner in possession of the said house but she apprehended her forcible dispossession by the appellant. Hence, she filed the suit for injunction.

The appellant, on the other hand, pleaded preliminary legal objections. On merits, he denied if his mother, Smt. Budha, was in possession of the suit property. The said house was the part of the house of the appellant where he was living for the last 30-32 years. His mother Smt. Budha was residing with her other son, Jagroop Singh. Since the appellant was in possession of the said house, therefore, the question of apprehension

of her forcible dispossession at the hands of the appellant did not arise.

Issues were framed. Smt. Budha herself appeared as PW-1. She also examined Dev Raj Singla as PW-2 and closed the evidence after proving on record agreement Ex. P-1. On the other hand, the defendant-appellant examined Vijay Kumar Singla as DW-1, Baldev Singh as DW-2 and himself appeared as DW-3 and also proved the site plan, Ex. D1 and voter list, Ex. D-2. The learned trial Court considered the evidence and reached at the conclusion that Smt. Budha has not been able to prove her case. Accordingly, dismissed the suit vide judgment and decree dated 29.10.1999.

Smt. Budha filed the appeal. The learned lower appellate Court reverse the finding of fact recorded by the learned trial Court and accepted the appeal vide judgment and decree dated 7.9.2001.

Hence, the present appeal.

During the pendency of the appeal Smt. Budha died and her legal representatives were impleaded but none appeared to contest the case.

The following questions of law arise:-

1. Whether the agreement dated 30.12.1974 conferred legal and valid rights of ownership in favour of Smt. Budha?
2. Whether the vendor of Smt. Budha, namely, Parbati herself was the owner of the suit property?

The Statement of Smt. Budha, who appeared as PW-1 was placed on the file as Annexure A-1. She has admitted in the cross examination that Kheta Singh was her husband. He was living with his son Ram Rup Singh(appellant). She also admitted that she had differences with her husband and she was living with her other son, Jagroop Singh. She also

admitted that her vote was prepared alongwith the votes of Jagroop Singh, his wife and children in the house of Jagroop Singh. She also admitted that Kheta Singh was living with Ram Rup Singh and he died in his house. She also admitted that Parbati was not the owner.

This evidence led by Smt. Budha clearly shows that she was not owner of the suit property. It is also clearly made out that the house in dispute is a part of the house in which Ram Rup Singh-appellant was living with his father while Smt. Budha was not living in this house. She admittedly has a vote in the house of her another son, Jagroop Singh. Therefore, it was proved that she was living with Jagroop Singh and the house in dispute is the part of house of Ram Rup Singh-appellant.

Since Parbati was not the owner, therefore, she could not pass on any valid right in favour of Smt. Budha. Moreover, Smt. Budha had stated in her statement while appearing as PW-1 that she had purchased this plot for a sum of Rs. 2,000/- through agreement dated 30.12.1974. This agreement did not pass on any valid right of ownership in her, as admittedly, it was not the registered document.

Accordingly, this appeal is accepted and the impugned judgment and decree dated 7.9.2001 passed by the learned lower appellate Court is set aside and that of trial Court are upheld.

(S.N.Aggarwal)
Judge

December 5 2006
paramjit